

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

DISEASES: Authority to detain individuals suspected of
carrying communicable diseases

EMERGENCY MEDICAL PERSONNEL:

FIREFIGHTERS AND FIRE DEPARTMENTS:

PUBLIC HEALTH CODE:

The Public Health Code does not authorize licensed emergency medical services personnel to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox. Only a local health department and the Michigan Department of Community Health are authorized to seek an order of the circuit court to detain individuals suspected of carrying communicable diseases, and except in the case of an emergency, such an order is subject to notice and opportunity for a hearing.

Neither the Public Health Code nor the Fire Prevention Code authorize the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox.

Opinion No. 7141

October 6, 2003

Honorable Gretchen Whitmer
State Representative
The Capitol
Lansing, MI 48913

You have asked two questions regarding the authority of emergency medical personnel and fire-fighting officials to detain an individual suspected of carrying a communicable disease.

You first ask whether licensed emergency medical services personnel have authority to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome (SARS) or smallpox, and if so, how long such an individual may be detained without a court order.

Consistent with Const 1963, art 4, § 51, the Legislature enacted the Public Health Code (Code), MCL 333.1101 *et seq*, to protect and promote the public health. Section 2453(2) of the Code, MCL 333.2453(2), provides:

A local health department or the department [of Community Health] may provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238.

Sections 5201 through 5238 are found in Part 52 of the Code, entitled "Hazardous Communicable Diseases." These sections regulate the prevention and control of diseases and set forth the process that must be followed by a local health department or the Michigan Department of Community Health (MDCH) to seek a court order for the involuntary detention and treatment of individuals suspected of carrying a hazardous communicable disease.

Section 5203(1) of the Code, MCL 333.5203(1), provides that upon a determination by a local health department or the MDCH that an individual is a "carrier" and is a "health threat to others,"¹ either shall issue a warning notice to the individual requiring the individual to cooperate with the local health department or the MDCH in their efforts to prevent or control the transmission of serious communicable diseases or infections. Warning notices must generally be in writing but may be oral under urgent circumstances if followed by a written statement within three days. MCL 333.5203(2). A warning notice shall be individual and specific and shall not be issued to a class of persons. MCL 333.5203(2). The warning notice must include a statement that, unless the individual takes the action requested in the warning notice, a representative of the MDCH or the local health officer "shall seek an order from the probate court, pursuant to this part."² MCL 333.5203(3). Further, the warning notice must state that, except in cases of emergency, the individual has the right to a hearing and has other rights before the court issues an order. MCL 333.5203(3).

If an MDCH representative or local health officer knows or reasonably believes that an individual has failed or refused to comply with a warning notice, he or she "may petition the circuit court for the county of Ingham or for the county served by the local health department" for an order. MCL 333.5205(1). Upon a finding that the allegations set forth in the petition have been proven by clear and convincing evidence, the circuit court may issue an order that may require, among other things, that the individual: undergo medically accepted tests to verify the individual's status as a carrier or for diagnosis; participate in educational and counseling programs; notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring; and live part time or full time in a supervised setting for the period and under the conditions established by the circuit court. MCL 333.5205(6).

The Legislature has enacted expedited procedures to address an emergency situation in section 5207 of the Code, which states, in pertinent part:

To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual. An order issued under this subsection may be issued in an ex parte proceeding upon an affidavit of a department representative or a local health officer. The court shall issue an order under this subsection upon a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. An order under this subsection may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention. [MCL 333.5207(1).]

Thus, MDCH representatives, local health officers, peace officers, and health care facilities may be authorized by court order to detain an individual determined on reasonable cause to be a carrier and a health threat to others. However, even under an emergency order, an individual may not be detained for longer than 72 hours (excluding Saturdays, Sundays, and legal holidays) without a prompt post-detention court hearing to determine if the temporary detention should continue. MCL 333.5207(3). Moreover, the individual may only continue to be detained if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released. MCL 333.5207(5).³

Other sections of the Code define "emergency medical personnel" to include "a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator." MCL 333.20904 (4). Part 209 of the Code, entitled "Emergency Medical Services," requires that emergency medical personnel be licensed by the Department of Consumer and Industry Services, Bureau of Health Services, to provide emergency medical services. MCL 333.20950(1). The Code does not authorize emergency medical personnel to involuntarily detain individuals suspected of carrying a hazardous communicable disease.⁴ As set forth above, the involuntary detention and treatment of individuals suspected of carrying a hazardous communicable disease is regulated by sections 5201 to 5238, which only authorize the MDCH or a local health department to seek an order from the circuit court to detain and treat an individual who has been determined to be a

"carrier" and is a "health threat to others." The express mention of one thing in a statute implies the exclusion of similar other things. *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 572, n 8; 592 NW2d 360 (1999).

It is my opinion, therefore, in answer to your first question, that the Public Health Code does not authorize licensed emergency medical services personnel to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox. Only a local health department and the Michigan Department of Community Health are authorized to seek an order of the circuit court to detain individuals suspected of carrying communicable diseases, and except in the case of an emergency, such an order is subject to notice and opportunity for a hearing.

Your second question asks whether the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, have authority to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox, and if so, how long such an individual may be detained without court order.

As stated in answer to your first question, the Public Health Code only authorizes local health departments and the MDCH to seek court orders to detain individuals suspected of carrying communicable diseases. Since the Public Health Code does not confer that authority upon fire-fighting officials, I have also examined the Fire Prevention Code to determine if such authorization is given there.

As expressed in its title, the Fire Prevention Code, MCL 29.1 *et seq*, was enacted to "provide for the prevention of fires and the protection of persons and property from exposure to the dangers of fire or explosion." In the event of an "emergency condition dangerous to persons or property," section 7a(1) of the Fire Prevention Code, MCL 29.7a(1), provides that the state fire marshal or the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform, acting under the orders and directions of the commanding officer, may take all necessary steps and prescribe all necessary restrictions and requirements to protect persons and property until the dangerous condition is abated.

No provision in the Fire Prevention Code, however, authorizes the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease. The courts have made clear that, in construing a statute, provisions may not be added that the Legislature did not include. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565 NW2d 844 (1997). Moreover, the powers of administrative officers extend only to those expressly granted or reasonably implied. *Public Health Dep't v Rivergate Manor*, 452 Mich 495, 503; 550 NW2d 515 (1996), citing *Coffman v State Bd of Examiners in Optometry*, 331 Mich 582, 590; 50 NW2d 322 (1951).⁵

It is my opinion, therefore, in answer to your second question, that neither the Public Health Code nor the Fire Prevention Code authorize the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox.

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¹Sec. 5201(1)(a) of the Public Health Code defines a "carrier" as:

"[A]n individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease." MCL 333.5201(1)(a).

"Health threat to others" means that "an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection." MCL 333.5201(1)(b).

Section 5101(1)(g), MCL 333.5101(1)(g), defines serious communicable disease as "a communicable disease or infection that is designated as serious by the department pursuant to this part." Pursuant to Section 5111(1)(a), MCL

333.5111(1)(a), the MDCH has promulgated rules that designate and classify serious communicable diseases. 1993 AACRS, R 325.172. This rule is a compilation of those conditions that must be reported to health authorities. According to recent information supplied to this office by State of Michigan Epidemiologist Dr. Matthew Boulton, although smallpox and SARS are not explicitly listed in this rule, both diseases would fall under subsection (s) of this rule pertaining to: "The unusual occurrence, outbreak, or epidemic of any condition, including nosocomial infections." Rule 325.172(1)(s).

²Although this section refers to the probate court, the operative sections for seeking a court order were amended by 1997 PA 57 and now require the MDCH or local health officer to seek an order from the circuit court. See MCL 333.5205 and 333.5207.

³Other parts of the Code address emergencies of a broader scale. For example, section 2251(1) of the Code, MCL 333.2251(1), empowers the Director of the MDCH, "[u]pon a determination that an imminent danger to the health or lives of individuals exists in this state," to issue orders to avoid, correct, or remove the imminent danger as defined in the statute. The order may "specify action to be taken" or prohibit the presence of individuals in locations or under conditions where the imminent danger exists. MCL 333.2251(l). Except in certain circumstances, a person who violates a rule or order of the MDCH is guilty of a misdemeanor punishable by imprisonment for not more than six months or a fine of not more than \$200 or both. MCL 333.2261. Similar authority is granted to local health officers within the area served by their local health departments. MCL 333.2451. Moreover, the MDCH Director is also vested with specified emergency powers to protect the public health in connection with epidemics. MCL 333.2253.

⁴Section 20969 of the Code specifically authorizes emergency medical personnel to involuntarily treat or transport individuals requiring emergency medical services if in "exercising professional judgment, [they] determine that the individual's condition makes the individual incapable of competently objecting to treatment or transportation . . . unless the objection is expressly based on the individual's religious beliefs." MCL 333.20969. The plain language of this section provides no indication that the Legislature intended it to apply to the situation where an individual, who has not been determined to require emergency medical services, is suspected of having a hazardous communicable disease.

⁵Your first question is not presented in the context of a declared state of emergency by the Governor under the Emergency Management Act, MCL 30.401 *et seq.* In the event of a declared emergency, the Governor is vested with broad authority to respond to the emergency, including the power to suspend a regulatory statute prescribing the procedures for the conduct of state business, evacuate all or a part of the population from a stricken or threatened area if necessary to preserve life, control the ingress and egress to and from a stricken or threatened area, and "direct all other actions which are necessary and appropriate under the circumstances." MCL 30.405(1)(a), (e), (g), and (j). A person who willfully disobeys or interferes with the implementation of an emergency directive of the Governor is guilty of a misdemeanor. MCL 30.405(2). See also MCL 10.31.

<http://opinion/datafiles/2000s/op10217.htm>

State of Michigan, Department of Attorney General

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